

TUT. 47.001.31.53.001.2022.00060.00



**REPUBLIC OF COLOMBIA FIRST CIVIL CIRCUIT COURT  
JUDICIAL DISTRICT OF SANTA MARTA**

Santa Marta, April Twenty-second (22), Two Thousand and  
Twenty-two (2022)

Peninsula Petroleum Limited, filed a constitutional tutela action  
against the Seventh Court of Small Cases and Multiple Jurisdictions of  
this city, and being in the opportunity to do so, it is decided.

**BACKGROUND OF THE DECISION**

The plaintiff, through an attorney-in-fact, filed the present  
constitutional mechanism in order to protect his fundamental rights to  
due process and access to the administration of justice, allegedly  
violated by the judicial agency in question, and consequently, requests  
that a ruling be issued in the process of seizure and delivery of goods  
given as collateral corresponding to case number 2021.00534.00. As

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The following factual circumstances are related in support of its claims:

He stated that, on October 1, 2021, he filed a request for seizure and delivery of goods given as collateral, for the purpose of satisfying a credit, which corresponded to the court in question, by means of file number 2021.00534.00.

He pointed out that he has repeatedly filed impulse requests, that is, on November 2, 2021, January 24 and February 21, 2022, without the judicial agency making any pronouncement on the matter, for which he considers that there is an unjustified delay.

## PERFORMANCE OF THE FIRM

By order of April 4, 2022, this constitutional action was admitted, and consequently, notification was ordered to the office in question so that in the term of 2 days it could pronounce itself on the facts that originated the constitutional action, and it was also requested to send a copy of the actions that generated the alleged violation, and the link to the file 2021.00534. On the other hand, the attached documents were considered as evidence, and Dr. David Araque Quijano was recognized as the legal representative of the plaintiff.

The respondent judicial agency responded to the call, stating that, in accordance with the provisions of agreement No. CSJMAA21-.

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135 of December 1, 2021 issued by the Sectional Council of the Judiciary of Magdalena, the process in question was forwarded to the Fourth Municipal Civil Court of this city, by means of official letter 0097 of April 4, 2022, a situation that was communicated via e-mail to the plaintiff.

In the meantime, the plaintiff filed a writ requesting that the Fourth Municipal Civil Court be linked to the present proceeding, by virtue of the referral made by the Court being sued.

By means of a ruling dated April 7, 2022, the Fourth Municipal Civil Court was ordered to be summoned and granted a term of 10 hours to submit a report in accordance with the facts presented in the constitutional action, and to submit a copy of the case file.

The Fourth Municipal Civil Court filed a writ indicating that, due to the fact that the Seventh Municipal Civil Court became the Court of Small Claims and Multiple Jurisdictions, it was assigned the request for seizure and delivery of assets initiated by Peninsula Petroleum Limited against CI International Fuells LLC, under file number 47001405300720210053400, and on the occasion of the present constitutional action, an admissory order was issued on April 18, 2022, which would be notified by state, and in such sense, it requests that the current lack of object be declared due to a supervening event.

By order of April 20, 2022, CI International Fuells LLC was ordered to be bound, in order to safeguard its right to

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defense and contradiction, so that in the term of 4 hours he could pronounce himself on the facts that gave rise to this case.

## **OFFICE CONSIDERATIONS**

In order to protect fundamental constitutional rights, the Constitution established tutela in Article 86, specifically for when these rights are violated or threatened by the action or omission of public authorities or private individuals, in the cases established by law.

This law states that Colombia is a Social State of Law, and this action is a worthy manifestation of it, as it has been instituted as the suitable, timely and effective instrument to defend them.

But this was conceived with a subsidiary and residual character, so that it can only be used in the absence of other effective means of defense to enforce them, and when these exist it is not possible to choose between one or the other, since it is only viable to resort to tutelary protection when the law does not foresee any other suitable means for such purposes.

On this occasion, the plaintiff's complaint is focused on the fact that he requires that the request for apprehension and delivery of assets be expedited, since no decision has been issued since it was filed, despite the fact that several procedural motions have been filed. For its

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On the other hand, the court informed that it forwarded said request to the Fourth Municipal Civil Court, which, in turn, stated that it issued the corresponding pronouncement.

In that order of ideas, regarding petitions before judicial authorities the Constitutional Court in judgment T-394 of 2018 stated:

"Now, with respect to the right to petition judicial authorities, this Court has clarified its scope by stating that while it is true that the right to petition may be exercised before judges and, consequently, they are obliged to process and respond to the requests submitted to them,<sup>[37]</sup> it is also true that *"the judge or magistrate who conducts a judicial proceeding is subject -as are the parties and the intervening parties- to the rules of that proceeding, as established by law, which means that the legal provisions contemplated for administrative proceedings are not necessarily the same as those that the judge must observe when petitions are submitted to him regarding points that must be resolved in due course and in accordance with the rules of each trial.* <sup>[38]</sup>

In this regard, the Court has held that the scope of the right to petition is limited with respect to petitions filed before judicial authorities, since the types of requests must be differentiated, which may be of two kinds: (i) those referring to strictly judicial actions, which are regulated in the respective procedure of each trial, and the decision must then be subject to the terms and procedural stages provided for that purpose; and (ii) those petitions that, being alien to the very content of the *litis* and procedural impulses, must be addressed by the judicial authority under the general rules of the right of petition governing the administration and,<sup>[39]</sup> in particular, of Law 1755 of 2015<sup>[40]</sup>.

In this order, the omission of the judicial officer to resolve the petitions related to his jurisdictional activity according to the

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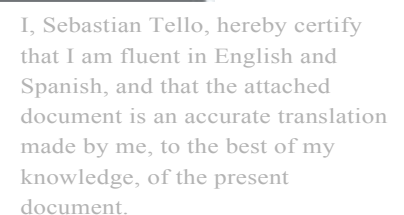
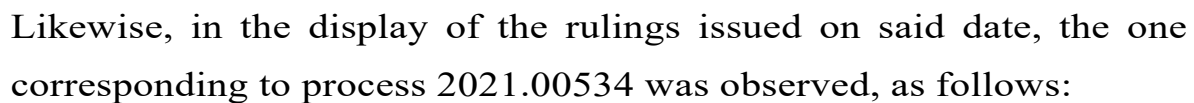
forms proper to the respective process, constitutes a violation of due process and of the right to access to the administration of justice<sup>[41]</sup>. On the other hand, the failure of the jurisdictional authority to resolve petitions filed in relation to administrative matters constitutes a violation of the right to petition<sup>[42]</sup>".

Thus, in the present case, what the plaintiff is seeking is the celerity of the request for arrest and delivery of assets, reason for which he repeatedly requested procedural momentum, without the judicial agency pronouncing itself on the matter, a situation that although it is not a process unrelated to the litigation itself, and is more related to the jurisdictional activity, it is no less true that the judicial officer must respond to the request, otherwise he would be violating the fundamental right to due process.

In this regard, after reviewing the evidence in the file, it is observed that on November 2, 2021, January 24 and February 21, 2022, the active party submitted requests via e-mail to the Court, which had as subject: *"Request for procedural impulse"*, however, by virtue of what was ordered by the Superior Council of the Judiciary in Agreement N° CSJMAA21-135, the process object of the litis was referred to the Fourth Municipal Civil Court, which by decision of April 18 of the present annuity decided, among other aspects, to admit the request, and consequently ordered the seizure and delivery of some assets, for which it commissioned the Central Police Inspector of this city.

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Based on the foregoing, this agency concludes that in the present case a superceded fact has occurred, which has been defined by constitutional jurisprudence as<sup>1</sup>:

*"The Constitutional Court in repeated jurisprudence[25] has explained that the fact overcome and the damage consummated give rise to the actual lack of object, whose existence implies that the factual situation that causes the alleged threat or violation of the alleged right disappears or is overcome, so that the tutela judgment that could be issued by the constitutional judge would not produce any effect and therefore would not be in accordance with the objective constitutionally provided for this action, which is to grant immediate protection of fundamental rights that have been violated or are threatened by the action or omission of public authorities, or individuals in cases expressly provided by law".*

In this regard the Court said:

*"It should be recalled that the actual lack of subject matter has been based on the existence of a 'consummated damage'[26], on an event that has been overcome'[27], on the assimilation of both expressions as synonyms[28], on the mixture of them as a consummated event[29] and even on a subtraction of subject matter[30], although the latter expression has also been accepted as a synonym for lack of subject matter."*

Consequently, we will proceed to declare the current lack of subject matter due to a superceded fact, as will be established in the operative part of this decision.

For the foregoing, the First Civil Court of the Circuit of Santa Marta, administering justice in the name of the Republic and by authority of the Law,

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<sup>1</sup> Ruling T-943 of 2009.

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**RESOLVED:**

**FIRST:** **Declare** the current lack of subject due to a superceded fact in the constitutional action invoked by Peninsula Petroleum Limited against the Seventh Court of Small Cases and Multiple Jurisdictions of this city, for the reasons given in the text of this decision.

**SECOND:** NOTIFY this decision to the intervening parties by the most expeditious means possible and forward a copy of the respective ruling.

**THIRD:** If it is not challenged, send this decision together with the file of which it forms part to the Constitutional Court, for its eventual review, as provided in Article 33 of Decree 2591 of 1991.

Be notified and complied with.

**Signed By:**

**Monica De Jesus Gracias Coronado**

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**Judge  
Circuit Court  
Civil 1  
Santa Marta - Magdalena**

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